

Robert A. Sacks (SBN 150146)
sacksr@sullcrom.com
Rory P. Culver (SBN 271868)
culverr@sullcrom.com
SULLIVAN & CROMWELL LLP
1888 Century Park East
Los Angeles, California 90067
Tel: (310) 712-6600
Fax: (310) 712-8800

Laura Kabler Oswell (SBN 241281)
oswelll@sullcrom.com
SULLIVAN & CROMWELL LLP
1870 Embarcadero Road
Palo Alto, California 94303
Tel.: (650) 461-5600
Fax: (650) 461-5700

Attorneys for Thomson
Consumer Electronics, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE
(CRT) ANTITRUST LITIGATION

Master File No. 3:07-5944-SC

MDL No. 1917

This Document Relates to:

Sharp Electronics Corp., et al. v.
Hitachi, Ltd., et al.

**[PROPOSED] REPORT AND
RECOMMENDATIONS GRANTING
THOMSON CONSUMER
ELECTRONICS, INC.'S MOTION TO
DISMISS**

1 TO THE HONORABLE SAMUEL CONTI, UNITED STATES DISTRICT JUDGE:

2 Having carefully considered all of the papers filed in support of and in opposition
 3 to Thomson Consumer Electronics, Inc.'s ("Thomson Consumer") Motion to Dismiss the
 4 Complaint ("Complaint") of Plaintiffs Sharp Electronics Corp. and Sharp Electronics
 5 Manufacturing Company of America, Inc. ("Sharp"), and having entertained argument of
 6 counsel, the Special Master recommends that:

- 7 1. The Complaint should be DISMISSED in its entirety because Sharp's claims
 8 are time-barred under the three- and four- year statutes of limitations
 9 applicable to its claims.
- 10 2. The Complaint should be DISMISSED in its entirety because Sharp has failed
 11 to state a plausible claim against Thomson Consumer.
- 12 3. The Complaint's Fourth, Fifth and Sixth Claims for Relief should be
 13 DISMISSED because Sharp has failed to demonstrate that it has prudential
 14 constitutional standing to assert claims under the antitrust laws of New York
 15 and New Jersey or that the Court can apply the laws of those states to
 16 Thomson Consumer consistent with the Due Process Clause.
- 17 4. The Complaint's Fifth Claim for Relief should be DISMISSED because Sharp
 18 has failed to allege consumer-oriented, deceptive conduct under the unfair
 19 competition law of New York.
- 20 5. The Complaint's First, Second, Fourth and Sixth Claims for Relief should be
 21 DISMISSED to the extent that they are based on indirect purchases of cathode
 22 ray tubes ("CRTs"), direct purchases of products containing CRTs ("CRT
 23 Products") or indirect purchases of CRT Products because Sharp lacks
 24 antitrust standing under the principles articulated in *Associated General*
 25 *Contractors of California v. California State Council of Carpenters*, 459 U.S.
 26 519 (1983) and its progeny.
- 27 6. The Complaint's First, Fourth and Sixth Claims for Relief should be
 28 DISMISSED to the extent that they are based on indirect purchases of CRTs,

direct purchases of CRT Products or indirect purchases of CRT Products because Sharp lacks antitrust standing under *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) and its progeny.

7. The Complaint should be DISMISSED in its entirety because, under the Foreign Trade Antitrust Improvements Act of 1982, 15 U.S.C. § 6a, this Court lacks subject-matter jurisdiction over Sharp's federal and state law claims concerning a foreign antitrust conspiracy in the global CRT market.

- or -

All allegations in the Complaint regarding foreign anticompetitive conduct that do not relate to CRTs or CRT Products sold inside the United States should be STRICKEN pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, and any claims based on those allegations should be DISMISSED.

DATED: _____

Hon. Charles A. Legge
United States District Judge
(Ret.)
Special Master

The Report and Recommendations are Accepted and Ordered / Denied / Modified.

DATED: _____

Hon. Samuel Conti
United States District Judge